IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 483 of 2006

The Managing Director,
Shri Warana Sahakari Sakhar
Karkhana Limited. ... Petitioner.

V/s.

Shri Keshav Shankar Patil
and others. ... Respondents.

S.S.Pakale for the petitioner.

Paras Kuhad for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 27th March 2006.

P.C. :

Heard learned counsel for the rival parties. Perused petition and annexures annexed thereto.

2. This petition is directed against the judgment and order dated 10th January, 2006 passed by the Industrial Court, Kolhapur in Revision Application (BIR) No.2 of 2004 filed against the order dated 31st March, 2004 passed by the Labour Court, Kolhapur below Exh.F taken out in

Application (BIR) No.6 of 1985. The Labour Court while trying on preliminary issue, vide its order dated 31st March, 2004, held that the domestic enquiry held against the applicant- workman was not legal and proper.

3. Being aggrieved by this order the opponent-employer filed revision application before the Industrial Court being Revision Application (BIR) No. 2 of 2004. The Industrial Court, vide impugned order dated 10th January, 2006, dismissed the said revision application and remitted back the record and proceeding to the Labour Court.

4. The above order is a subject matter of challenged in this petition filed under Articles 26 nd 227 of the Constitution of India.

5. Having heard learned counsel for the petitioner, in my opinion, it is not necessary for this Court to entertain this petition at this stage in view of the Apex Court judgment in the case of ***Cooper Engineering Ltd.*** **v.** ***P.P.Mundhe***, AIR 1975 SC 1900; wherein it has been held as under:

> "When a case of dismissal or discharge of an employee is referred for industrial adjudication the court should first decide as a preliminary issue whether the domestic enquiry has violated principles of natural justice. When there is no domestic enquiry or defective enquiry conducted is admitted by the employer, there

> will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the Management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. There will be no justification for any party to stall final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at that stage."

The aforesaid view of the Apex Court has again been reiterated in the case of ***D.P. Maheshwari v. Delhi Admn.***, AIR 1984 SC 153.

6. In the above view of the matter, petition is liable to be dismissed in limine leaving the question of validity of the impugned orders open for being challenged, in the event the petitioners, in future, are required to carry the matter before the higher forum after ultimate disposal of the proceedings by the Labour Court. All rival contentions in that behalf are kept open.

7. At this stage, learned counsel for the petitioner prayed for extension of the interim relief granted by this Court vide order 23rd February, 2006. The record shows that the said

interim relief was operative only for a period of two weeks. There is no order extending the said interim relief. With the expiry of two weeks the said interim relief got lapsed. In this view of the matter, now, there cannot be extension of interim relief. Prayer for extension of interim relief is, thus, rejected.

8. In the result, petition is dismissed in limine with aforesaid liberty reserved in favour of the petitioner with no order as to costs.

(V.C.DAGA, J.)